

# Press Release

## European Court of Human Rights

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### Press release issued by the Registrar

## Chamber judgment - Opuz v. Turkey

Strasbourg, 09.06.2009 - The European Court of Human Rights has today notified in writing its Chamber judgment<sup>1</sup> in the case of **Opuz v. Turkey** (application no. 33401/02) concerning the Turkish authorities' failure to protect the applicant and her mother from domestic violence.

The Court held unanimously that:

- there had been a **violation of Article 2** (right to life) of the European Convention on Human Rights in respect of the applicant's mother who was killed by the applicant's ex-husband despite the fact that the domestic authorities had been repeatedly alerted about his violent behaviour;
- there had been a **violation of Article 3** (prohibition of torture and of inhuman and degrading treatment) on account of the authorities' failure to protect the applicant against her ex-husband's violent and abusive behaviour; and,
- there had been a **violation of Article 14** (prohibition of discrimination) read in conjunction with Articles 2 and 3 on account of the violence suffered by the applicant and her mother having been gender-based, which amounted to a form of discrimination against women, especially bearing in mind that, in cases of domestic violence in Turkey, the general passivity of the judicial system and impunity enjoyed by aggressors mainly affected women.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 30,000 euros (EUR) in respect of non-pecuniary pecuniary damage and EUR 6,500 for costs and expenses. (The judgment is available only in English).

### 1. Principal facts

The applicant, Nahide Opuz, is a Turkish national who was born in 1972 and lives in Diyarbakır (Turkey). In 1990 Ms Opuz started living with H.O., the son of her mother's husband. Ms Opuz and H.O. got married in November 1995 and had three children in 1993, 1994 and 1996. They had serious arguments from the beginning of their relationship and are now divorced.

Between April 1995 and March 1998 there were four incidents of H.O.'s violent and threatening behaviour which came to the notice of the authorities. Those incidents involved several beatings, a fight during which H.O. pulled out a knife and H.O. running the two women down with his car. Following those assaults the women were examined by doctors who testified in their reports to various injuries, including bleeding, bruising, bumps, grazes and scratches. Both women were medically certified as having sustained

<sup>1</sup> Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

life-threatening injuries: the applicant as a result of one particularly violent beating; and, her mother following the assault with the car.

Criminal proceedings were brought against H.O. on three of those occasions for death threats, actual, aggravated and grievous bodily harm and attempted murder. As regards the knife incident, it was decided not to prosecute for lack of evidence. H.O. was twice remanded in custody and released pending trial.

However, as the applicant and her mother withdrew their complaints during each of those proceedings, the domestic courts discontinued the cases, their complaints being required under Article 456 § 4 of the Criminal Code to pursue any further. The proceedings concerning the car incident were nevertheless continued in respect of the applicant's mother, given the seriousness of her injuries, and H.O. was convicted to three months' imprisonment, later commuted to a fine.

On 29 October 2001 the applicant was stabbed seven times by H.O. and taken to hospital. H.O. was charged with knife assault and given another fine of almost 840,000 Turkish lira (the equivalent of approximately EUR 385 ) which he could pay in eight instalments. In his statement to the police he claimed that he and his wife, who frequently argued about her mother interfering in their marriage, had had an argument which had got out of hand.

Following that incident, the applicant's mother requested that H.O. be detained on remand, maintaining that on previous occasions her and her daughter had had to withdraw their complaints against him due to his persistent pressure and death threats.

In April 1998, October and November 2001 and February 2002 the applicant and her mother filed complaints with the prosecution authorities about H.O.'s threats and harassment, claiming that their lives were in immediate danger and requesting that the authorities take immediate action such as H.O.'s detention. In response to those requests for protection, H.O. was questioned and his statements taken down; he was then released.

Finally, on 11 March 2002 the applicant's mother, having decided to move to Izmir with her daughter, was travelling in the removal van when H.O. forced the van to pull over, opened the passenger door and shot her. The applicant's mother died instantly.

In March 2008 H.O. was convicted for murder and illegal possession of a firearm and sentenced to life imprisonment. Released pending the appeal proceedings, he claims that he killed the applicant's mother because his honour had been at stake as she had taken his wife and children away from him and had led his wife into an immoral way of life.

In April 2008 the applicant filed another criminal complaint with the prosecution authorities in which she requested the authorities to take measures to protect her as, since his release, her ex-husband had started threatening her again, via her new boyfriend. In May and November 2008 the applicant's representative informed the European Court of Human Rights that no such measures had been taken and the Court requested an explanation. The authorities have since taken specific measures to protect the applicant, notably by distributing her ex-husband's photograph and fingerprints to police stations with the order to arrest him if he was spotted near the applicant's place of residence.

In the meantime, in January 1998, Law no. 4320 of the Family Protection Act entered into Force in Turkey which provides for specific measures for protection against domestic violence.

## **2. Procedure and composition of the Court**

The application was lodged with the European Court of Human Rights on 15 July 2002 and was examined for admissibility and merits at the same time.

Third-party comments were received from Interights which was given leave to intervene in the Court's proceedings under Article 36 § 2 of the Convention (third party intervention) and Rule 44 § 2 of the Rules of Court.

A hearing was held in public in the Human Rights Building, Strasbourg, on 7 October 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), **President**,  
Elisabet **Fura-Sandström** (Sweden),  
Corneliu **Bîrsan** (Romania),  
Alvina **Gyulumyan** (Armenia),  
Egbert **Myjer** (the Netherlands),  
Ineta **Ziemele** (Latvia),  
Işıl **Karakaş** (Turkey), **judges**,

and also Santiago **Quesada**, **Section Registrar**.

### 3. Summary of the judgment<sup>2</sup>

#### Complaints

The applicant alleged that the Turkish authorities failed to protect the right to life of her mother and that they were negligent in the face of the repeated violence, death threats and injury to which she herself was subjected. She relied on Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair trial within a reasonable time) and 13 (right to an effective remedy). She further complained about the lack of protection of women against domestic violence under Turkish domestic law, in violation of Article 14 (prohibition of discrimination).

#### Decision of the Court

##### Article 2

The Court considered that, in the applicant's case, further violence, indeed a lethal attack, had not only been possible but even foreseeable, given the history of H.O.'s violent behaviour and criminal record in respect of his wife and her mother and his continuing threat to their health and safety. Both the applicant and her mother had suffered physical injuries on many occasions and been subjected to psychological pressure and constant death threats, resulting in anguish and fear. The violence had escalated to such a degree that H.O. had used lethal weapons, such as a knife or a shotgun. The applicant's mother had become a target of the violence as a result of her perceived involvement in the couple's relationship; the couple's children could also be considered as victims on account of the psychological effects of the ongoing violence in the family home. As concerned the killing of the applicant's mother, H.O. had planned the attack, since he had been carrying a knife and a gun and had been wandering around the victim's house prior to the attack.

According to common practice in the member States, the more serious the offence or the greater the risk of further offences, the more likely it should be that the prosecution continue in the public interest, even if victims withdrew their complaints. However, when repeatedly deciding to discontinue the criminal proceedings against H.O., the authorities referred exclusively to the need to refrain from interfering in what they perceived to be a "family matter". The authorities had not apparently considered the motives behind the withdrawal of the complaints, despite the applicant's mother's statements to the prosecution authorities that she and her daughter had felt obliged to do so because of H.O.'s death threats and pressure. It was also striking that the victims had withdrawn their complaints when H.O. had been at liberty or following his release from custody.

Despite the withdrawal of the victims' complaints, the legislative framework should have enabled the prosecuting authorities to pursue the criminal investigations against H.O. on the basis that his violent behaviour had been sufficiently serious to warrant prosecution and that there had been a constant threat to the applicant's physical integrity. Turkey had therefore failed to establish and apply effectively a system by which all forms of domestic violence could be punished and sufficient safeguards for the victims be provided.

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<sup>2</sup> This summary by the Registry does not bind the Court.

Indeed, the local authorities could have ordered protective measures under Law no. 4320 or issued an injunction banning H.O. from contacting, communicating with or approaching the applicant's mother or entering defined areas. On the contrary, in response to the applicant's mother's repeated requests for protection, notably at the end of February 2002, the authorities, apart from taking down H.O.'s statements and then releasing him, had remained passive; two weeks later H.O. shot dead the applicant's mother.

The Court therefore concluded that the national authorities had not shown due diligence in preventing violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O.. Nor could the investigation into the killing, to which there had been a confession, be described as effective, it having lasted so far more than six years. Moreover, the criminal law system had had no deterrent effect in the present case. Nor could the authorities rely on the victims' attitude for the failure to take adequate measures. The Turkish authorities had therefore failed to protect the right to life of the applicant's mother, in violation of Article 2.

### Article 3

The Court considered that the response to H.O.'s conduct had been manifestly inadequate in the face of the gravity of his offences. The judicial decisions, which had had no noticeable preventive or deterrent effect on H.O., had been ineffective and even disclosed a certain degree of tolerance towards his acts. Notably, after the car incident, H.O. had spent just 25 days in prison and only received a fine for the serious injuries he had inflicted on the applicant's mother. Even more striking, as punishment for stabbing the applicant seven times, he was merely imposed with a small fine, which could be paid in instalments.

Nor had Turkish law provided for specific administrative and policing measures to protect vulnerable persons against domestic violence before January 1998, when Law No. 4320 came into force. Even after that date, the domestic authorities had not effectively applied those measures and sanctions in order to protect the applicant.

Finally, the Court noted with grave concern that the violence suffered by the applicant had not in fact ended and that the authorities continued to display inaction. Despite the applicant's request in April 2008, nothing was done until after the Court requested the Government to provide information about the protection measures it had taken.

The Court therefore concluded that there had been a violation of Article 3 as a result of the authorities' failure to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her ex-husband.

### Article 14

The Court first looked at the provisions related to discrimination against women and violence according to some specialised international human rights instruments, in particular the Convention for the Elimination of Discrimination Against Women and the Belem do para Convention, as well as at the relevant documents and decisions of international legal bodies, such as the United Nations Commission on Human Rights and the Inter-American Commission. It transpired from the international-law rules and principles, accepted by the vast majority of States, that the State's failure – even if unintentional - to protect women against domestic violence breached women's right to equal protection of the law.

According to reports submitted by the applicant drawn up by two leading non-governmental organisations, the Diyarbakır Bar Association and Amnesty International, and uncontested by the Government, the highest number of reported victims of domestic violence was in Diyarbakır, where the applicant had lived at the relevant time. All those victims were women, the great majority of whom were of Kurdish origin, illiterate or of a low level of education and generally without any independent source of income.

Indeed, the reports suggested that domestic violence was tolerated by the authorities and that the

remedies indicated by the Government did not function effectively. Research showed that, despite Law no. 4320, when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the role of mediator by trying to convince the victims to return home and drop their complaint. Delays were frequent when issuing and serving injunctions under Law no. 4320, given the negative attitude of the police officers and that the courts treated the injunctions as a form of divorce action. Moreover, the perpetrators of domestic violence did not receive dissuasive punishments; courts mitigated sentences on the grounds of custom, tradition or honour.

The Court therefore considered that the applicant had been able to show that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence. Bearing that in mind, the violence suffered by the applicant and her mother could be regarded as gender-based, which constituted a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the applicant's case, indicated that there was insufficient commitment to take appropriate action to address domestic violence. The Court therefore concluded that there had been a violation of Article 14, in conjunction with Articles 2 and 3.

### Other Articles

Given the above findings, the Court did not find it necessary to examine the same facts in the context of Articles 6 and 13.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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